

FILED

2011 03 2011

Board of Vocational Nursing
and Psychiatric Technicians

KAMALA D. HARRIS
Attorney General of California
KAREN B. CHAPPELLE
Supervising Deputy Attorney General
WILLIAM D. GARDNER
Deputy Attorney General
State Bar No. 244817
300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 897-2114
Facsimile: (213) 897-2804
Attorneys for Complainant

**BEFORE THE
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. VN-2009-1000

**DIANE ELIZABETH BAILEY
PO Box 1601
Brookings, OR 97415
Vocational Nurse License No. VN 192893**

A C C U S A T I O N

Respondent.

Complainant alleges:

PARTIES

1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Board of Vocational Nursing and Psychiatric Technicians, Department of Consumer Affairs.

2. On or about September 18, 2000, the Board of Vocational Nursing and Psychiatric Technicians issued Vocational Nurse License Number VN 192893 to Diane Elizabeth Bailey (Respondent). The Vocational Nurse License expired on June 30, 2010.

JURISDICTION

3. This Accusation is brought before the Board of Vocational Nursing and Psychiatric Technicians (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

///

1 4. Section 118, subdivision (b), provides, in pertinent part, that the expiration of a
2 license shall not deprive the Bureau jurisdiction to proceed with a disciplinary action during the
3 period within which the license may be renewed, restored, reissued or reinstated. Under section
4 2892.1 of the Code, the Bureau may renew an expired license at any time within four years after
5 the expiration.

6 5. Section 2875 provides, in pertinent part, that the Board may discipline the holder of a
7 vocational nurse license for any reason provided in Article 3 (commencing with section 2875) of
8 the Vocational Nursing Practice Act.

9 6. Section 2878 states, in pertinent part:

10 "The Board may suspend or revoke a license issued under this chapter [the Vocational
11 Nursing Practice Act (Bus. & Prof. Code, 2840, et seq.)] for any of the following:

12 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

13

14 (4) The use of excessive force upon or the mistreatment or abuse of any patient. For the
15 purposes of this paragraph, "excessive force" means force clearly in excess of that which
16 would normally be applied in similar clinical circumstances.

17

18 "(j) The commission of any act involving dishonesty, when that action is related to the
19 duties and functions of the licensee.

20 7. Section 2878.8 states:

21 "The board may deny any application or may suspend or revoke any license issued under
22 this chapter [the Vocational Nursing Practice Act] based upon the denial of licensure, suspension,
23 restriction, or other disciplinary action of a license by another state, any other government
24 agency, or by another California health care professional licensing board. A certified copy of the
25 finding shall be conclusive evidence of that action provided that, if from another state, the
26 findings establish an act which if committed in California would be grounds for discipline."

27 ///

28 ///

8. Title 16, section 2518.6, of the California Code of Regulations provides, in pertinent part:

"(a) A licensed vocational nurse shall safeguard patients'/clients' health and safety by actions that include but are not limited to the following:

(1) Reporting to the Board acts specified in Sections 2878 and 2878.5 of the Business and Professions Code;

(2) Documenting patient/client care in accordance with standards of the profession;

• • • •

"(b) A licensed vocational nurse shall adhere to standards of the profession and shall incorporate ethical and behavioral standards of professional practice

"(c) A violation of this section constitutes unprofessional conduct for purposes of initiating disciplinary action.

COST RECOVERY

9. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FIRST CAUSE FOR DISCIPLINE

(Disciplinary Action by Another State)

10. Respondent is subject to disciplinary action under section 2878.8, in conjunction with section 2878, subdivision (a)(4), in that the State of Oregon suspended Respondent's nursing license due to "conduct derogatory to the standards of nursing." The circumstances are as follows:

a. On or about February 9, 2009, Respondent was reported to the Oregon State Board of Nursing (Oregon Board) for allegations of physical abuse against a resident and verbal abuse against other residents under her care at Good Samaritan Society-Curry Village located in Brookings, Oregon. On March 30, 2009, the Oregon Board mailed a letter to Respondent at her address of record which instructed Respondent to contact the Board by April 9, 2009, in order to

1 schedule an interview regarding the allegations with an investigator. Respondent failed to
2 respond to this request.

3 b. On or about April 10, 2009, the Oregon Board mailed a second letter to Respondent
4 at her address of record which instructed Respondent to contact the Board within 5 business days
5 in order to schedule an interview regarding the allegations with an investigator. Respondent
6 failed to respond to this request.

7 c. On or about May 6, 2009, the Oregon Board sent Respondent, via certified mail to her
8 address of record, a Notice of Proposed Suspension of Licensure as Practical Nurse. The Notice
9 granted Respondent 20 days to request a hearing on the matter. Respondent failed to timely
10 request a hearing. Accordingly, in an Order dated June 17, 2009, Respondent's Oregon nursing
11 license was suspended indefinitely by the Oregon Board.

12 **SECOND CAUSE FOR DISCIPLINE**

13 (Unprofessional Conduct – Noncooperation with Board)

14 11. Respondent is subject to disciplinary action under section 2878, subdivision (a), in
15 conjunction with California Code of Regulations, title 16, section 2518.6, in that Respondent has
16 failed to adhere to standards of the licensed vocational nursing profession. The circumstances are
17 as follows:

18 a. On or about November 9, 2009, the Board sent correspondence to Respondent at her
19 address of record in which it notified Respondent that it had received information that
20 Respondent's Oregon nursing license had been suspended by the Oregon Board. Accordingly,
21 the correspondence requested that Respondent submit, within 30 days, a detailed description of
22 the events that led to the suspension and certified copies of all related disciplinary documents
23 from the Oregon Board. Respondent failed to respond to this request.

24 b. On or about February 24, 2010, in correspondence sent via certified mail to
25 Respondent's address of record, the Board made a second request to Respondent for a detailed
26 description of the events that led to suspension by the Oregon Board and for certified copies of all
27 related disciplinary documents. The correspondence requested that a response be submitted
28 within 30 days. To date, respondent has failed to respond to this request.

1 **THIRD CAUSE FOR DISCIPLINE**

2 (Unprofessional Conduct – Improper Documentation of Patient Care)

3 12. Respondent is subject to disciplinary action under section 2878, subdivision (a), in
4 conjunction with California Code of Regulations, title 16, section 2518.6, subdivision (a) and (c),
5 in that Respondent failed to document patient care in accordance with the standards of the
6 vocational nursing profession. The circumstances are as follows:

7 a. On August 21, 2007, Respondent violated the Nursing Practice Act by “pre-charting”
8 her care for Patient C.M. Specifically, Respondent prepared and submitted clinical notes related
9 to the care she provided to Patient C.M. on August 21, 2007, prior to the time in which that care
10 was actually rendered.

11 b. Respondent falsified information contained in a certified In-Home Worker Time
12 Sheet that she submitted to her employer. Specifically, Respondent submitted a certified In-
13 Home Worker Time Sheet, dated September 21, 2007, wherein she documented the nursing care
14 she provided to Patient C.M. from 0800 to 2000 hours on September 17, 2007 through September
15 21, 2007. Respondent signed the In-Home Worker Time Sheet certifying that said services were
16 provided to Patient C.M. at his residence located at 1941 Peyton Road, La Verne, CA 91750.
17 Respondent did not provide the nursing services to Patient C.M. at his residence in California on
18 the dates in question. On September 17, 2007 through September 21, 2007, Respondent provided
19 nursing care services to Patient C.M. in Philadelphia, Pennsylvania. Respondent is not licensed
20 to practice in Pennsylvania.

21 **FOURTH CAUSE FOR DISCIPLINE**

22 (Unprofessional Conduct – Acts Involving Dishonesty)

23 13. Respondent is subject to disciplinary action under section 2878, subdivision (j), in
24 conjunction with California Code of Regulations, title 16, section 2518.6, subdivision (b) and (c),
25 in that Respondent committed acts involving dishonesty. Complainant refers to, and by this
26 reference incorporates, the allegations set forth above in paragraph 12, subparagraphs (a) and (b),
27 inclusive, as though set forth fully herein.

28 ///

1 **PRAYER**


2 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
3 and that following the hearing, the Board of Vocational Nursing and Psychiatric Technicians
4 issue a decision:

5 1. Revoking or suspending Vocational Nurse License Number VN 192893, issued to
6 Diane Elizabeth Bailey;

7 2. Ordering Diane Elizabeth Bailey to pay the Board of Vocational Nursing and
8 Psychiatric Technicians the reasonable costs of the investigation and enforcement of this case,
9 pursuant to Business and Professions Code section 125.3;

10 3. Taking such other and further action as deemed necessary and proper.
11

12
13 DATED: June 6, 2011

14 
15 TERESA BELLO-JONES, J.D., M.S.N., R.N.
16 Executive Officer
17 Board of Vocational Nursing and Psychiatric Technicians
18 Department of Consumer Affairs
19 State of California
20 Complainant

21
22
23
24
25
26
27
28
LA2009507262
50888537.doc